

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 657

Introduced by Assembly Member Bogh

February 19, 2003

An act to amend Section 23596 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 657, as amended, Bogh. Vehicle forfeiture: driving under the influence.

Under existing law, a court is authorized to declare the motor vehicle driven by a defendant, *if the defendant is the registered owner of the vehicle*, to be a nuisance if the defendant is convicted of certain subsequent offenses involving driving under the influence or a first offense of gross vehicular manslaughter while intoxicated or vehicular manslaughter while under the influence ~~and to have the motor vehicle sold~~. Existing law requires a vehicle declared to be a nuisance to be sold and the proceeds, as specified, to be forfeited.

This bill would require the court to declare those motor vehicles nuisances ~~and to have those vehicles sold~~. This bill would include as an offense by a defendant subjecting to forfeiture the vehicle being driven, murder while driving under the influence. The bill would also make clarifying changes. Because this would increase the level of services of local law enforcement officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23596 of the Vehicle Code is amended
2 to read:

3 23596. (a) (1) Upon its own motion or upon motion of the
4 prosecutor in a criminal action for a violation of any of the
5 following offenses, the court with jurisdiction over the offense,
6 notwithstanding Section 86 of the Code of Civil Procedure and any
7 other provision of law otherwise prescribing the jurisdiction of the
8 court based upon the value of the property involved, shall declare
9 the motor vehicle driven by the defendant in the commission of the
10 offense to be a nuisance if the defendant is the registered owner of
11 the vehicle:

12 (A) *A violation of Section 187 of the Penal Code committed*
13 *while driving a motor vehicle in violation of Section 23140, 23152,*
14 *or 23153.*

15 (B) A violation of Section 191.5 of, or paragraph (3) of
16 subdivision (c) of Section 192 of, the Penal Code.

17 ~~(B)~~—

18 (C) A violation of Section 23152 which occurred within seven
19 years of two or more separate offenses of Section 191.5 of, or
20 paragraph (3) of subdivision (c) of Section 192 of, the Penal Code,
21 or Section 23152 or 23153, or any combination thereof, which
22 resulted in convictions.

23 ~~(C)~~—

24 (D) A violation of Section 23153 which occurred within seven
25 years of one or more separate offenses of Section 191.5 of, or



1 paragraph (3) of subdivision (c) of Section 192 of, the Penal Code,
2 or Section 23152 or 23153, which resulted in convictions.

3 (2) The court or the prosecutor shall give notice of the motion
4 to the defendant, and the court shall hold a hearing before a motor
5 vehicle may be declared a nuisance under this section.

6 (b) Except as provided in subdivision (g), upon the conviction
7 of the defendant and at the time of pronouncement of sentence, the
8 court with jurisdiction over the offense shall order any vehicle
9 declared to be a nuisance pursuant to subdivision (a) to be sold.
10 Any vehicle ordered to be sold pursuant to this subdivision shall
11 be surrendered to the sheriff of the county or the chief of police of
12 the city in which the violation occurred. The officer to whom the
13 vehicle is surrendered shall promptly ascertain from the
14 department the names and addresses of all legal and registered
15 owners of the vehicle and, within five days of receiving that
16 information, shall send by certified mail a notice to all legal and
17 registered owners of the vehicle other than the defendant, at the
18 addresses obtained from the department, informing them that the
19 vehicle has been declared a nuisance and will be sold or otherwise
20 disposed of pursuant to this section and of the approximate date
21 and location of the sale or other disposition. The notice shall also
22 inform any legal owner of its right to conduct the sale pursuant to
23 subdivision (c).

24 (c) Any legal owner who is a motor vehicle dealer, bank, credit
25 union, acceptance corporation, or other licensed finance
26 institution legally operating in this state, or the agent of that legal
27 owner, may take possession and conduct the sale of the vehicle
28 declared to be a nuisance if it notifies the officer to whom the
29 vehicle is surrendered of its intent to conduct the sale within 15
30 days of the mailing of the notice pursuant to subdivision (b). Sale
31 of the vehicle pursuant to this subdivision may be conducted at the
32 time, in the manner, and on the notice usually given for the sale of
33 repossessed or surrendered vehicles. The proceeds of any sale
34 conducted by the legal owner shall be disposed of as provided in
35 subdivision (e). A notice pursuant to this subdivision may be
36 presented in person, by certified mail, by facsimile transmission,
37 or by electronic mail. The agent of a legal owner acting pursuant
38 to this subdivision shall be licensed, or exempt from licensure,
39 pursuant to Chapter 11 (commencing with Section 7500) of
40 Division 3 of the Business and Professions Code.

1 (d) If the legal owner or the agent of the legal owner does not
2 notify the officer to whom the vehicle is surrendered of its intent
3 to conduct the sale as provided in subdivision (c), the officer shall
4 offer the vehicle for sale at public auction within 60 days of
5 receiving the vehicle. At least 10 days but not more than 20 days
6 prior to the sale, not counting the day of the sale, the officer shall
7 give notice of the sale by advertising once in a newspaper of
8 general circulation published in the city or county, as the case may
9 be, in which the vehicle is located, which notice shall contain a
10 description of the make, year, model, identification number, and
11 license number of the vehicle and the date, time, and location of
12 the sale. For motorcycles, the engine number shall also be
13 included. If there is no newspaper of general circulation published
14 in the county, notice shall be given by posting a notice of sale
15 containing the information required by this subdivision in three of
16 the most public places in the city or county in which the vehicle is
17 located, and at the place where the vehicle is to be sold, for 10
18 consecutive days prior to and including the day of the sale.

19 (e) The proceeds of a sale conducted pursuant to this section
20 shall be disposed of in the following priority:

21 (1) To satisfy the costs of the sale, including costs incurred with
22 respect to the taking and keeping of the vehicle pending sale.

23 (2) To the legal owner in an amount to satisfy the indebtedness
24 owed to the legal owner remaining as of the date of the sale,
25 including accrued interest or finance charges and delinquency
26 charges.

27 (3) To the holder of any subordinate lien or encumbrance on the
28 vehicle to satisfy any indebtedness so secured if written
29 notification of demand is received before distribution of the
30 proceeds is completed. The holder of a subordinate lien or
31 encumbrance, if requested, shall reasonably furnish reasonable
32 proof of its interest and, unless it does so on request, is not entitled
33 to distribution pursuant to this paragraph.

34 (4) To any other person who can establish an interest in the
35 vehicle, including a community property interest, to the extent of
36 his or her provable interest.

37 (5) If the vehicle was forfeited as a result of a felony violation
38 of Section 191.5 of the Penal Code, or of Section 23153 that
39 resulted in serious bodily injury to any person other than the

1 defendant, the balance, if any, to the city or county in which the
2 violation occurred, to be deposited in its general fund.

3 (6) Except as provided in paragraph (5), the balance, if any, to
4 the city or county in which the violation occurred, to be expended
5 for community-based adolescent substance abuse treatment
6 services.

7 The person conducting the sale shall disburse the proceeds of the
8 sale as provided in this subdivision, and provide a written
9 accounting regarding the disposition to all persons entitled to or
10 claiming a share of the proceeds, within 15 days after the sale is
11 conducted.

12 (f) If the vehicle to be sold under this section is not of the type
13 that can readily be sold to the public generally, the vehicle shall be
14 destroyed or donated to an eleemosynary institution.

15 (g) No vehicle shall be sold pursuant to this section in either of
16 the following circumstances:

17 (1) The vehicle is stolen, unless the identity of the legal and
18 registered owners of the vehicle cannot be reasonably ascertained.

19 (2) The vehicle is owned by another, or there is a community
20 property interest in the vehicle owned by a person other than the
21 defendant and the vehicle is the only vehicle available to the
22 defendant's immediate family that may be operated on the
23 highway with a class 3 or class 4 driver's license.

24 (h) The Legislature finds and declares it to be the public policy
25 of this state that no policy of insurance shall afford benefits that
26 would alleviate the financial detriment suffered by any person as
27 a direct or indirect result of a confiscation of a vehicle pursuant to
28 this section.

29 SEC. 2. Notwithstanding Section 17610 of the Government
30 Code, if the Commission on State Mandates determines that this
31 act contains costs mandated by the state, reimbursement to local
32 agencies and school districts for those costs shall be made pursuant
33 to Part 7 (commencing with Section 17500) of Division 4 of Title
34 2 of the Government Code. If the statewide cost of the claim for
35 reimbursement does not exceed one million dollars (\$1,000,000),
36 reimbursement shall be made from the State Mandates Claims
37 Fund.

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